



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-14

SUBJECT: FRANK SULLIVAN, TRUSTEE
LANDER COUNTY SCHOOL DISTRICT
BOARD OF TRUSTEES

A. JURISDICTION:

As Trustee for the Lander County School District, Frank Sullivan is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 05-14 (Tab B)
- Reviewed subject's response received March 28, 2005 (Tab C)
- Reviewed the February 9, 2005 minutes of the Lander County School Board (Tab D)

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(5).

SPECIFIC REASON:

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges Mr. Sullivan violated the Ethics in Government law by:

1. Unprofessional behavior unbecoming a school board member;
2. Unethical conduct: distributing confidential material within the community;
3. Acrimonious behavior directed towards audiences during a school board meeting;
4. Petitioning other coaching staff and community members to behave in the same negative manner; and
5. Using his position and information obtained while on the board for his own benefit.

E. SUMMARY OF SUBJECT'S RESPONSE:

In his response, Mr. Sullivan provided the following information:

- That NRS 281.451 [sic] et seq. deals with the propriety of government officials and employees using their governmental positions to influence or gain pecuniary advantage, and no allegation within the complaint asserts any potential violation of NRS 281.451(5) [sic];
- There is no statutory standard for “behavior unbecoming a school board member;”
- There is no allegation that the letter or the composure and dissemination of the letter to the school board members was used by Sullivan to further the pecuniary interests of anyone; and
- There is no allegation that the actions of Sullivan, acrimonious or not, were used to further the pecuniary interests of anyone.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

G. RESULTS OF INVESTIGATION:

Factual History:

Frank Sullivan (hereinafter “Sullivan”) is a Trustee for the Lander County School District Board of Trustees. Sullivan was appointed as assistant softball coach by the head softball coach for Battle Mountain High School (hereinafter “BMHS”). Carol Masterson (hereinafter “Masterson”), the person who filed this complaint, is a prior school district employee and also a mother to a member of the BMHS softball team.

Steve Larsgaard is the Superintendent of Schools for Lander County, Nevada. On February 8, 2005, Masterson met with Larsgaard in order to voice her concerns regarding the school board’s choice to appoint Frank Sullivan as assistant coach to the BMHS softball team. Masterson stated to Larsgaard that Sullivan was mentally abusive towards her daughter and other players during Sullivan’s previous term as assistant coach. Requester asked Larsgaard to contact the former athletic director for BMHS and the former principal of BMHS and gather information regarding Sullivan’s coaching record and former alleged complaints against Sullivan.

That same day, Larsgaard spoke to the current principal and athletic director regarding Masterson’s concerns. Neither the principal nor the athletic director shared these concerns. Also, they were unable to locate any personnel files left behind by the former principal and former athletic director that contained concerns about Sullivan. Further, the district personnel clerk reviewed district-maintained personnel files for any documentation that the former principal and athletic director may have filed in reference to Sullivan and found no such information.

In response to Masterson’s concerns, Larsgaard wrote her a letter on February 9, 2005 advising Masterson of the procedures followed in appointing Sullivan, including the procedure of fingerprinting all coaches and conducting criminal background checks. The letter also stated that Larsgaard and the school board expect the coaches to treat all students with respect and if they fail to live up to this expectation, appropriate measures will be taken. The letter was copied to the school board members, the principal, and the athletic director.

At the school board meeting on February 9, 2005, members of the school board (including Sullivan) were given a copy of Larsgaard’s letter to Masterson. Masterson was not aware of the letter until three days after the meeting when she personally received the letter.

On February 11, 2005 Sullivan withdrew his acceptance of the assistant coach position. It has been the county’s practice for the head coach to appoint his assistant coach and thereafter for the school board to confirm the appointment. In this case, Sullivan resigned from his coaching position prior to the matter ever coming before the school board for confirmation. During prior coaching engagements with the county, Sullivan returned to

the county all monies received for coaching. In this instance, Sullivan was not compensated for the brief tenure of his appointment.

Potential Violation of NRS 281.481(5):

NRS 281.481(5) provides:

“If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.”

In order to find a violation of the statute, two elements must be met. First, the public officer, through his public duties or relationships, must acquire information that is not available to people generally. Second, the public officer must have used that information to further a pecuniary interest.

In this instance, the complaint asserts Sullivan disseminated confidential material within the community. However, there is no evidence within the record to support that, through his position as Trustee, Sullivan acquired any confidential information as contemplated within statute. The letter sent to Masterson contained information regarding Sullivan himself, and likely contained no information that would not already be known to Sullivan. However, as the person about whom Masterson complained, Sullivan would likely have been entitled to receive a copy of the letter regardless of his position with the school board. Assuming this logic, Sullivan could not be found to have received confidential information by virtue of his position in government. Even assuming Sullivan gained some sort of confidential information through his public office, no evidence has been presented to support the concept that confidential information was used by Sullivan to further the pecuniary interests of any person or business entity. Therefore, there is insufficient evidentiary basis to support the allegation that Sullivan violated NRS 281.481(5).

The Executive Director finds no credible evidence exists to substantiate a potential violation of NRS 281.481(5). Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Mr. Larsgaard violated the provisions of NRS 281.481(5).

H. CONCLUSION:

The Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(5), and further that the allegations be dismissed.

DATED: November 4, 2005

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR